

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
SEVENTH REGION**

CALUMET CENTER¹

Employer

and

CASE 7-RC-21928

AMERICAN FEDERATION OF STATE,
COUNTY, AND MUNICIPAL EMPLOYEES,
AFL-CIO, MICHIGAN COUNCIL 25²

Petitioner

APPEARANCES:

Sheryl A. Laughren, Attorney, of Detroit, Michigan, for the Employer.
Bruce A. Miller and Nedra Campbell, Attorneys, of Detroit, Michigan,
for the Petitioner.

DECISION AND ORDER

Upon a petition duly filed under Section 9(c) of the National Labor Relations Act, as amended, hereinafter referred to as the Act, a hearing was held before a hearing officer of the National Labor Relations Board, hereinafter referred to as the Board.

Pursuant to the provisions of Section 3(b) of the Act, the Board has delegated its authority in this proceeding to the undersigned.

Upon the entire record in this proceeding,³ the undersigned finds:

1. The hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.

¹ The Employer's name appears as amended at hearing.

² The Petitioner's name appears as corrected at hearing.

³ The parties filed briefs, which were carefully considered.

2. The Employer is engaged in commerce within the meaning of the Act and it will effectuate the purposes of the Act to assert jurisdiction herein.

3. The labor organization involved claims to represent certain employees of the Employer.

4. No question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of Section 9(c)(1) and Section 2(6) and (7) of the Act.

The Employer, known as Calumet Center, operates an 80-bed residential detention facility for the temporary housing of adolescent boys awaiting either trial or post-conviction disposition. The crimes of which the residents are accused or convicted range from misdemeanors to class one felonies such as murder, rape, and arson. The 58,000 square foot facility, classified as high security, is located in the City of Highland Park, Michigan. The Employer runs the facility under a contract with Wayne County's Department of Community Justice. Calumet Center is the sole detention facility owned by Spectrum Human Services, a social service agency whose other operations include mental health, foster care, and adoption programs.

Calumet Center, which opened in February 2000, now employs about 125 persons organized into the five departments of social work, education, human relations, operations, and intake. Social workers, recreation coordinators, and nurses belong to the social work department, teachers to the education department, and the human resource director to human relations. The operations department consists of cooks, maintenance / custodial employees, and security guards. The intake department is comprised of shift supervisors and youth specialists (also known as youth workers). Although the youth specialists and security guards are nominally assigned to different departments, both classifications report directly to the shift supervisors.⁴

The Petitioner seeks to represent a unit of 64 youth specialists, 3 custodians, and 5 food service workers. The Employer asserts, contrary to the Petitioner, that the youth specialists are guards within the meaning of the Act and therefore may not be combined appropriately with the remaining non-professional employees. Should youth specialists be found non-guards, the parties agree that the Petitioner's bargaining unit configuration is appropriate. Should youth

⁴ Based upon statutory indicia of supervisory authority set forth in the record, I concur in the parties' stipulation that the following individuals are supervisors within the meaning of the Act: Vice President Oliver Johnson, Clinical Director Shirley Titus, Food Service Coordinator Gloria Bassett, Operations Manager Cheryl Young, Teacher Supervisor Martin Stephens, Human Resources Administrator Joann Hines, and Shift Supervisors Keith Boston, Kevin Brooks, Carnell Feagin-Lyons, Harry Garrett, Ernest Maxwell, Doris Moor, Angela Morrell, Terry Russell, Ramona Shah, Eugene Walker, Henry Williams, and Ernest Lucas. The supervisory positions of facility director and intake coordinator were apparently vacant at the time of the hearing, and the incumbent social work director was not named.

specialists be found guards, the Petitioner, which admits non-guard employees to membership, does not desire an election. Consequently, the sole issue for consideration is whether youth specialists are guards within the meaning of Section 9(b)(3) of the Act.

A youthful inmate -- handcuffed, shackled, and belly-chained -- travels to Calumet Center in a vehicle manned by the Employer's security guards. The guards usher the inmate into an initial processing area called the sally port. Guards release the inmate from his mechanical restraints, and the intake process begins. Guards monitor the inmate while he strips and showers. Youth specialists also monitor the shower, observing and recording physical details of the inmate's person such as scars, marks, and tattoos. Youth specialists also secure and inventory the inmate's clothing and other non-valuable possessions, and issue a uniform, footwear, and personal hygiene products. Both guards and youth specialists fill out respective portions of forms reflecting the identity, physical condition, and other circumstances of the arriving inmate. Once the intake process is completed, the youth specialist escorts the inmate to his assigned cell in one of eight residential wings, called pods.

Each of the 8 pods houses 10 cells. During the day, two youth specialists are assigned to each pod. The minimum acceptable ratio of youth specialists to inmates from 6:30 a.m. to 8:30 p.m. is 2 to 10, so that a facility total of at least 16 youth specialists are on duty during the core day and afternoon shifts. During the regular nightly lockdown, the Employer uses eight youth specialists, one per pod, supplemented by "floaters" who work on several pods. In contrast, a facility total of five, four, and two security guards are assigned, respectively, to the day, afternoon, and midnight shifts.

The primary function of youth specialists is recited in the written job descriptions.⁵ At the most basic level, the youth specialist is responsible for supervising, directing, disciplining, and providing for the safety and security of the inmates in his charge. The youth specialist achieves this objective by keeping the inmate within his "line of sight" at every moment, participating in and monitoring the inmate's daily activities, and using personal suasion and group pressure to explain, reward, discipline, and counsel as the situation demands.

Youth specialists accompany inmates as they move through their daily routines. These activities include class work led by teachers, recreation in the gym

⁵ The parties introduced separate and somewhat discrepant job descriptions. The Employer's version was approved and assertedly implemented at the highest management levels. The Petitioner's version, signed by former high-ranking on-site supervisors, was the only one to have been distributed to at least some youth specialists. The variants differ mostly in the amount of emphasis placed on diagnostic assessment and treatment, with the Employer's document omitting and the Petitioner's stressing those responsibilities. In view of the controversy surrounding the genesis and current validity of these exhibits, I give weight in either only to those duties that are corroborated by other record evidence.

facilitated by the recreation coordinator, and group and individual counseling guided by social workers. Even though these activities are conducted by other adults, often professionals in their fields, the youth specialist remains either in the room or in close proximity. It is the youth specialists who have primary responsibility to observe and supervise inmates washing themselves, tidying their cells, and eating in the cafeteria.

As youth specialists escort their “pod” of charges through the hallways to the classrooms, dining area, and gym, they assure that the inmates walk in “transport mode” -- single file, in height order, with arms clutching the torso and fingers hidden. Navigation through the facility requires passage through numerous electronically locked doors. Youth specialists obtain clearance to pass by announcing their name and pod number. Only security guards and shift supervisors, monitoring the doors through video cameras, have the authority and power to trigger the locks. Similarly, the locked steel and glass doors of the inmates’ individual cells can be opened only by security guards and shift supervisors.

When misbehavior occurs, the youth specialist is supposed to quell the disturbance by the least aggressive means possible. If the misconduct escalates to a point where personal or property damage is occurring or is imminent, the youth specialist, equipped with a Nextel radio, will notify his shift supervisor and continue to apply de-escalation techniques. The supervisor alone decides whether mechanical restraints such as handcuffs will be used. If so, the supervisor normally summons a security guard. The security guard, not the youth specialist, affixes the necessary mechanical restraint.⁶ While the youth specialist may initiate the chain of events leading to a misbehaving inmate’s being locked in the “behavior management” room, the decision whether to impose the disciplinary lockdown is made by the shift supervisor. An inmate incarcerated in the behavior management room for misconduct, including suspected suicidal propensity, is monitored via video camera by security guards and shift supervisors, and personally observed at least every 15 minutes by a youth specialist who views the inmate from outside the door and records in a log what the inmate is doing.

When inmates are locked down for the night in their individual cells, the afternoon and midnight youth specialists perform an analogous function, observing each inmate at least every 15 minutes and noting his activity, if any, on a log posted on the locked steel door. Because the cells and pod hallways are not under video surveillance, the youth specialist is the only member of the staff in a position to check on inmates while they sleep.

⁶ The Employer offered testimony that a youth specialist may apply handcuffs under the direction of a shift supervisor. No specific example was adduced. The Petitioner supplied testimony from youth specialists that they are not permitted to, nor have they ever, put handcuffs on inmates.

A youth specialist will perform about 32 head counts daily to assure the presence of the inmates in his charge. He is vigilant in checking that items such as pencils and eating utensils are counted, so that they will not be hoarded and adapted as weapons. If a potential weapon is unaccounted for, the youth specialist will search the inmates' persons and, if applicable, their cells. In addition to conducting searches for cause, youth specialists also make periodic random searches for contraband.

Inmates are to conform to the rules in a written handbook that youth specialists review with inmates upon arrival and thereafter as necessary. Social workers also review and discuss the handbook during counseling sessions. Good behavior results in the earning of "tokens" that are exchanged for privileges such as more telephone calls and later bedtime. The youth specialist determines whether tokens are earned or erased, and records these events in written logs.

Although social workers lead formal group and individual counseling sessions, youth specialists apply, perhaps more informally, some of the same peer group dynamic techniques in their daily interactions with inmates. Like social workers, youth specialists encourage inmates to concentrate on reality, societal expectations, and the "here and now," and to discourage destructive ways of reacting to problems. Youth specialists engage in these kinds of conversations throughout the day as they supervise activities, serve snacks, help inmates with schoolwork, and play sports and board games with them.

Weekly interdisciplinary meetings were instituted in May 2000. At these 90-minute sessions, youth specialists join social workers, teachers, shift supervisors, nurses, and recreational therapists in discussing problems, setting goals, developing and reviewing treatment strategies, and identifying special needs. The youth specialist's role at the meeting is to furnish detailed anecdotal accounts of the behavior of the inmates in his pod.

Guards, not youth specialists, control the ingress and egress of visitors. The guard determines whether the visitor is on an approved list and, if so, subjects him and his parcels to inspection on both arrival and departure.⁷ Video monitoring cameras housed in the front office and control booths are manned by security guards and shift supervisors, not youth specialists. The task of transporting an inmate outside the building and remaining with him during a health appointment or court appearance normally falls to security guards, although youth specialists might accompany the inmate if no guard is available or if the outside stay will be lengthy. Security guards and not youth specialists are responsible for patrolling inside the building, the building's perimeter, and the grounds. Contact with an

⁷ A youth specialist, usually a floater, brings the inmate being visited to a room in the visitation area. The record was inconclusive as to whether the youth specialist is required to remain in the area during the visit. One youth specialist testifies that he does not. It seems clear that a security guard does remain in the area.

inmate's family and coordination of visits by family members are arranged by social workers, not youth specialists.

The Employer considers both the youth specialist and security guard jobs to be entry-level positions. Candidates for both classifications need only a high school diploma or its equivalent. Child care experience for youth specialists, and security experience for guards, is preferred but not required. Successful applicants for either position must pass a background criminal and driving check. Once hired, youth specialists and security guards together receive the same initial 40-hour training course. They learn first aid, cardiac pulmonary resuscitation, and crisis intervention techniques including the use of soft and mechanical restraints.⁸ As neither youth specialists nor security guards carry firearms, they do not receive firearms training. Employees in these classifications are not individually licensed by any government regulatory agency, but the Employer on its own requires 25 hours of refresher training after the youth specialist or security guard has worked for one year.

Both youth specialists and security guards wear uniforms. The two kinds of uniforms are distinguished by different colors and the language on the shirt -- "staff" for youth specialists and "security" for guards. Teachers and social workers wear ordinary street clothes.

Section 9(b)(3) of the Act forbids a labor organization to be certified as the bargaining representative of guard employees, if the labor organization also admits non-guard employees to membership. The traditional function of a statutory guard is to enforce rules for the protection of his employer's property and the safety of persons on that employer's premises. *Petroleum Chemicals Co.*, 121 NLRB 630 (1958). However, statutory guards may also protect the property of and persons at the premises of the employer's customers. *American District Telegraph Co.*, 160 NLRB 1130, 1136 (1966).

An employee may be classified as a statutory guard even though guard duties are not his exclusive function. In *A. W. Schlesinger Geriatric Center*, 267 NLRB 1363 (1983), the employer, a nursing home for geriatric patients, replaced an outside guard service contractor with two maintenance employees. These employees devoted about 30 to 50% of their time to maintenance chores, and the remaining 50 to 70% of their shift to the tasks formerly undertaken by the guard service. In the latter capacity, they locked and unlocked doors and gates, maintained a vigil at the doors during shift changes, noted and reported suspicious packages and persons, and made hourly rounds of the facility and its parking lot. The Board held that the maintenance employees were guards, finding that, as the sole replacement for the former guard service, they alone enforced rules to protect

⁸ The testimony is contradictory as to whether cooks and custodians also receive restraint training. It seems clear that teachers and social workers do not.

the safety of persons and property on the employer's premises. That the maintenance employees had no special guard training, did not wear guard uniforms or carry firearms, performed non-guard duties, and merely reported, rather than physically interdicted, infractions and suspicious activity were factors that did not defeat the guard finding.

A similar result was obtained in *PECO Energy Co.*, 320 NLRB 1074, 1083-1084 (1997). In that case, a janitor with medical restrictions was given light duty work at the employer's guard shack. His assignment was to do what the outside guard service, which the employer no longer retained, formerly did. The janitor monitored a surveillance camera, operated a motorized gate, issued visitor passes, and reported suspicious activity. The Board found him to be a guard.

A. W. Schlesinger and *PECO Energy* demonstrate that, regardless of the employee's title and lack of specialized training or firearm capability, he may be a guard if he alone is vested with the authority and responsibility to enforce the employer's safety and security rules. Accord: *Thunderbird Hotel*, 144 NLRB 84, 87-88 (1963).

A more complicated picture arises when safety and security functions are spread among different classifications. For example, in *New Hotel Monteleone*, 127 NLRB 1092, 1094 (1960), watchmen who made regular rounds of the property, punched watch clocks, and reported strangers, were concluded not to be guards, because "house officers," admittedly guards, provided the main protective duties on the premises. See also *Lion Country Safari*, 246 NLRB 156 (1979) (animal attendants not guards where rangers also performed security function). In *George Junior Republic*, 224 NLRB 1581, 1583 (1976), the employer housed and educated teenaged boys adjudicated delinquent. Employees classified as "nightmen" maintained order in the residential cottages, prevented unauthorized persons from entering, and assured that boys did not escape at night. Workers engaged in "custodian care" performed as nightmen but also were assigned 24-hour watch details of unruly residents. Other employees, denominated "security," patrolled the grounds to prevent theft, fire, illegal entry, and trespassing. The nightmen, including those assigned to custodian care, were concluded not to be guards. The security personnel were held to be guards. Taken together, *New Hotel Monteleone*, *Lion Country Safari*, and *George Junior Republic* at least imply that the Board is wary of labeling employees as guards when another classification exists that is vested with the more traditional indicia of guard duty such as limiting ingress or patrolling the perimeter.

The two cases most relied upon by the parties in the case at bar can be interpreted as a corollary of that theory. In both *Crossroads Community Correctional Center*, 308 NLRB 558 (1992) ("*Crossroads*") and *Corrections Corporation of America*, 327 NLRB 577 (1999) ("*CCA*"), no other security

personnel existed on the sites but for the employees at issue, whom the Regional Directors, with Board approval, declared guards.

In *Crossroads*, the employer operated a work release program for adult inmates nearing completion of their sentences. The work release program had two segments. The programs department featured 13 case managers, individuals with college degrees who offered inmates employment counseling and other therapy. The security department consisted of 45 correctional residence counselors (“CRCs”), whose basic job was to perform assigned security duties to advance the safety and security needs of residents, staff, and visitors. CRCs were required to have a high school diploma or its equivalent, or, alternatively, one year of social work or correctional experience. CRCs received training in completing forms, handling prisoners, using a walkie-talkie, and how to conduct a search. None were trained in the use of firearms or in self-protection techniques. None wore uniforms. Counseling inmates was not listed as a duty on the general CRC job description.

Like youth specialists at Calumet, CRCs at *Crossroads* reviewed handbook rules and procedures on earning passes; inventoried contraband; escorted residents to the dining room; counted heads; initiated room searches if wrongdoing was suspected; called a supervisor if an inmate became unruly; accompanied inmates to court and community service; and wrote disciplinary reports affecting the inmate’s “good time.” Also like youth specialists, CRCs did not use weapons or handcuffs.

Unlike Calumet’s youth workers, but like Calumet’s security guards, CRCs at *Crossroads* retrieved arriving inmates from correctional facilities; controlled ingress to the building; logged in and searched all in-coming visitors, residents, and fellow employees; searched all arriving packages, parcels, and vehicles; checked the facility’s parking lot; responded to and investigated alarms that sounded when a door opened without a buzzer; and watched video cameras surveilling the front entrance and floors of the facility. In fact, CRCs spent more than one-half of their time inside the control room, at least 2-1/2 hours per shift of which was devoted to scrutinizing the monitors.

The employer in *CCA* operated a correctional facility dedicated to convicts requiring drug treatment and mental health services. The facility had separate areas for high, medium, and low security housing. No given correctional officer (“CO”) at *CCA* performed all of the duties of either Calumet Center’s youth specialists or security guards. Rather, each CO was assigned to a particular post with a concomitantly narrow range of duties. As do youth specialists at Calumet, some COs performed intake duties such as reviewing the inmate’s file, inventorying property, and distributing personal hygiene products. Other COs escorted inmates within the building; responded to disturbances; wrote incident

reports; isolated inmates and conducted pat-searches if necessary; performed head counts; maintained logs showing the times of all daily inmate activities; enforced handbook rules; carried radios; searched inmates and their property; delivered food and books to inmates' rooms; contacted a supervisor if an inmate's behavior could not be quelled without confrontation; and notified the police in the event an inmate was missing.

Depending on their post, some COs had duties paralleling those of Calumet's security guards. Such COs pat-searched visitors, directed them to the visiting area, and checked them upon leaving; made rounds along the building's perimeter; controlled doors and alarms; operated locks; searched vehicles making deliveries; checked laundry carts for contraband; and monitored video systems. Unlike even Calumet's guards, a significant percentage of COs were certified in the use of firearms and carried the same in the performance of their duties. Still other COs in **CCA** performed work akin to that undertaken by Calumet's social workers, e.g., coordinating visits to outside facilities such as hospitals.

All COs described in **CCA**, regardless of post, received one month of training, in contrast to the one week afforded by Calumet. As noted, some but not all were trained in the use of weapons. Similarly, some but not all COs learned mechanical restraint and pressure point techniques.

The Board deemed the indicia of guard status among COs in **CCA** to be stronger than that of the CRCs in **Crossroads** based on the significant number of COs that carried firearms, received mechanical- and soft-restraint training, and were empowered to remove unruly inmates at the direction of a supervisor.

Both youth specialists and security guards in the instant case are entry-level positions. The Employer applies the same basic requirements to applicants for either job and makes no distinction between them for purposes of on-the-job training. The core mission of youth specialists is to enforce the Employer's rules for the safety of inmates, staff, and visitors, and for the protection of the Employer's property. They have full authority to exercise physical dominion over misbehaving inmates in the pursuit of that core function. Because the front security office and control rooms do not contain video monitors displaying the residential pods or regular cells, the Employer relies upon youth specialists as its sole security eyes and ears in those areas.

Calumet Center has an institutional interest in providing education and guidance to its young inmates, and this in turn vests youth specialists with a more fraternal role than is typical of corrections officers in adult prisons. However, the Employer uses bona fide teachers and social workers to carry out its true scholastic and counseling objectives. Moreover, as enunciated in *A. W. Schlesinger Geriatric Center*, supra, the exercise of non-guard tasks does not, in itself, negate a guard finding. Providing brotherly advice in life skills and anger

management, or participating in interdisciplinary strategy sessions, blurs but does not erase the youth specialist's essential function.

A common feature of *Crossroads* and *CCA* was the absence of other, undisputed guards to perform such hallmark security tasks as controlling ingress, egress, locks, and doors. However, many of the COs found to be guards in *CCA* were assigned to posts that did not involve those traditional guard responsibilities. Indeed, many COs found to be guards worked at posts that required only a portion of the duties that all of Calumet Center's youth specialists perform. The result in *CCA* dictates a finding that youth specialists are statutory guards as well.

The Petitioner stated on the record that it did not wish to proceed to an election without the inclusion of youth specialists in the unit. In light of the finding herein, the petition shall be dismissed.

IT IS HEREBY ORDERED that the petition herein be, and it hereby is, dismissed.⁹

Dated at Detroit, Michigan, this 12th day of January, 2001.

(Seal)

/s/William C. Schaub, Jr.

William C. Schaub, Jr.

Regional Director

National Labor Relations Board

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⁹ Under the provisions of the Board's Rules and Regulations, a request for review of this Decision and Order may be filed with the **National Labor Relations Board, addressed to the Executive Secretary, Franklin Court, 1099 14th Street, N.W., Washington, D.C. 20570**. This request must be received by the Board in Washington by **January 26, 2001**.